

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
June 11, 2003 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

William Paulette, Board member, presided. No other Board members were present.

Douglas Schroder appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries are attached.

Disc=Disciplinary Case
Lic=Licensing Application
RF=Recovery Fund Claim
Trades=Tradesmen Application

C=Complainant/Claimant
A=Applicant
R=Respondent/Regulant
W=Witness
Atty = Attorney

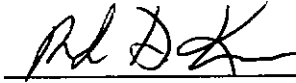
Participants

1. Donald R. Carr and David Boardway
File Number 2003-00939 (RF)
2. Eric W. Helfrich, t/a Home Investments
File Number 2002-00402 (Disc)

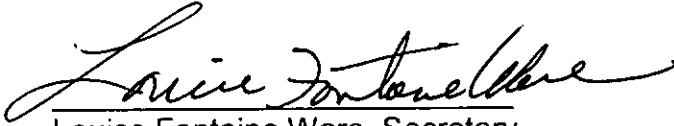
Boardway – C

The meeting adjourned at 9:30 a.m.

BOARD FOR CONTRACTORS



Mark D. Kinser, Chairman



Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS

IN RE: In the matter of the Virginia Contractor Transaction Recovery Act
Claim of R. David & Sandra Z. Boardway (Claimants) and Donald D.
Carr, t/a Apple Homes (Regulant)
LICENSE NUMBER: 2701030821

FILE NUMBER: 2003-00939

Summary of the Reconvened Informal Fact-Finding Conference

An Informal Fact-Finding Conference was previously convened on April 22, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding sent by certified mail to R. David Boardway, and Donald D. Carr, t/a Apple Homes on March 21, 2003. The Conference was adjourned, and scheduled to reconvene for the purpose of additional information to be provided by the claimant.

An informal Fact-Finding Conference (IFF) was reconvened on June 11, 2003, at the Department of Professional and Occupational Regulation pursuant to a Notice of Informal Fact-Finding sent by certified mail to R. David Boardway, and Donald D. Carr, t/a Apple Homes on May 13, 2003. The following individuals participated at the conference: R. David Boardway, Claimant; Douglas Schroder, Staff Member; and William A. Paulette, Presiding Board Member.

Donald D. Carr, t/a Apple Homes, Regulant, did not appear in person or by any other qualified representative at the April 22, 2003, IFF or the June 11, 2003, IFF.

Background

On **February 24, 2000**, in the Louisa General District Court, R. David Boardway obtained a **Judgment** against Donald Carr, in the amount of **\$15,000.00, plus interest and \$30.00 costs**.

On **November 15, 2001**, in District Court of Maryland for Harford County, R. David Boardway obtained a Certification of Judgment Under Act of Congress against Donald Carr.

On **December 26, 2001**, in the Louisa County Circuit Court, R. David Boardway obtained a Notice of Filing of Foreign Judgment against Donald Carr for the judgment entered in the Harford County District Court of Maryland.

The **claim** in the amount of **\$10,000.00** was received by the Department of Professional and Occupational Regulation on **October 2, 2002**.

Summation of Facts

1. **Code of Virginia, Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "Reimbursement of some expenses incurred to compete construction of house" as the basis for the suit. The block designated "Other" has been marked.

2. **Code of Virginia, Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants **did not** contract with the regulant as licensed.

The Board issued Class A License Number 2701030821, sole proprietorship, to Donald D. Carr, t/a Apple Homes on **November 17, 1987**. The license was

permanently revoked on **July 9, 1999**. The claimants entered into a written contract with Apple Homes, Inc., on **September 26, 1998** for the construction of a home. (Note: Don Carr is listed on Apple Homes, Inc., business card. The Contractors Board licensing record list D. Carr as the Qualified Individual and Designated Employee for Apple Homes.)

3. **Code of Virginia, Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

4. **Code of Virginia, Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia, Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

The original Judgment was entered on February 24, 2000, in the Louisa General District Court. On November 15, 2001, in District Court of Maryland for Harford County, R. David Boardway obtained a Certification of Judgment Under Act of Congress against Donald Carr. On **December 26, 2001**, in the Louisa County Circuit Court, R. David Boardway obtained a Notice of Filing of Foreign Judgment against Donald Carr for the judgment entered in the Harford County District Court of Maryland.

The claim was received on **October 2, 2002**.

6. **Code of Virginia, Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimants entered into a written contract with Apple Homes, Inc., on **September 26, 1998** for the construction of a home.

7. **Code of Virginia, Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia, Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted, as the regulant could not be found

9. **Code of Virginia, Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt recites "Reimbursement of some expenses incurred to compete construction of house" as the basis for the suit. The block designated "Other" has been marked. In the Affidavit of Facts dated **October 23, 2001**, the claimant asserts that Don Carr/Apple Homes, Inc., was in violation of §18.2-200.1 "Failure to perform promise for construction, etc., in return for advances."

10. **Code of Virginia, Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. **Code of Virginia, Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon information presented at the Recovery Fund IFF, it is recommended that the claim be approved for payment in the amount of \$10,000.00. The Warrant in Debt recites "Reimbursement of some expenses incurred to complete construction of house." Failure of the Regulant to complete the house as contracted with the Claimants falls within the definition of improper and dishonest conduct, per Section 54.1-1118, of the Code of Virginia.

It is noted that on December 26, 2001, in the Louisa County Circuit Court, Boardway obtained a Notice of Filing of Foreign Judgment against Donald Carr for the judgment entered in the Harford County District Court of Maryland. Subsequently, the claim was received on October 2, 2002.

By: _____

**William A. Paulette
Presiding IFF Board Member
Contractor's Recovery Fund**

Date: June 11, 2003

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: ERIC W. HELFRICH
T/A HOME INVESTMENTS
LICENSE NUMBER 2705-060288**

FILE NUMBER: 2002-00402

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 11, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Eric W. Helfrich, t/a Home Investments (Helfrich) on March 3, 2003, and by reschedule Notice on May 13, 2003. The following

individuals participated at the conference: Douglas Schroder, Staff Member; and William A. Paulette, Presiding Board Member.

Neither Helfrich, nor anyone on his behalf, appeared at the IFF.

Summation of Facts

1. On or about February 5, 2001, Thelma L. Kouzes (Kouzes) entered into a contract with Eric W. Helfrich (Helfrich), t/a Home Investments, in the amount of \$8,598.00, to mill and install three base cabinets with hardware and five bookcase-style wall cabinets with adjustable shelves and double glass beveled doors at 3524 Barkley Drive, Fairfax, Virginia.
2. The contract used by Helfrich failed to contain the minimum provisions required by the Board's 1999 Regulation 18 VAC 50-22-260(B)(8), subsection (h) contractor's class of license and specialty service.
3. On or about late April 2001, Helfrich installed three base cabinets without hardware. Helfrich failed to install the five bookcase-style cabinets with adjustable shelves and double glass beveled doors. Following a couple of disagreements between Kouzes and Helfrich, Helfrich left the job and considered the contract terminated.
4. The contract specified: "Time frame will be 4 to 6 weeks from start date (02/07/01)." On or about February 1, 2001, Kouzes paid Helfrich \$4,000 to start the cabinet work. On or about April 2, 2001, Kouzes paid Helfrich \$1,500 to purchase the glass.
5. Helfrich failed to return to complete the work contracted for or return the money received for work not performed or performed only in part.
6. On or about January 3, 2001, Eric W. Helfrich ("Helfrich"), t/a Home Investments, was issued Class B Contractor's license number 2705060288. On or about February 5, 2001, the check submitted by Helfrich with his licensing application was returned. On or about February 21, 2001, Helfrich's Class B Contractor's license number 2705060288 was suspended for the bad check. On or about late April 2001, Helfrich installed three base cabinets without hardware. On or about March 26, 2002, the suspension was removed.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(8)(h) (Effective May 1, 1999)

Helfrich's failure to make use of a legible written contract that contains all provisions specified in the regulation is in violation of Board Regulation 18 VAC 50-22-260(B)(8)(h) (Effective May 1, 1999). I recommend a monetary penalty of \$300.00 be imposed for the violation of the regulation.

Count 2: 18 VAC 50-22-260(B)(12) (Effective May 1, 1999)

Helfrich's failure to complete work contracted for is in violation of Board Regulation 18 VAC 50-22-260(B)(12) (Effective May 1, 1999). I recommend a monetary penalty of \$1,000.00 be imposed for the violation of the regulation, along with license revocation.

Count 3: 18 VAC 50-22-260(B)(6) (Effective May 1, 1999)

Helfrich's failure to comply with the terms in the contract is in violation of Board Regulation 18 VAC 50-22-260(B)(6) (Effective May 1, 1999). I recommend a monetary penalty of \$500.00 be imposed for the violation of the regulation

Count 4: 18 VAC 50-22-260(B)(12) (Effective May 1, 1999)

Helfrich's actions of failing to return to complete the work contracted for or return the money received for work not performed or performed only in part are in violation of the retention of funds provision of Board Regulation 18 VAC 50-22-260(B)(12) (Effective May 1, 1999). I recommend a monetary penalty of \$1,000.00 be imposed for the violation of the regulation, along with license revocation.

Count 5: 18 VAC 50-22-260(B)(6) (Effective May 1, 1999)

Helfrich's actions of continuing work while his license was suspended is in violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(6). I recommend a monetary penalty of \$1,000.00 be imposed for the violation of the regulation, along with license revocation.

By:

William A. Paulette
Presiding IFF Board Member
Board for Contractors
Date: June 11, 2003

STATE AND LOCAL GOVERNMENT
CONFLICT OF INTEREST ACT

TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government

1. Name: William Paulette
2. Title: Member
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conference on June 11, 2003
5. Nature of Personal Interest Affected by Transaction: _____

6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

Signature

Date

WPA

June 11, 2003